In re: Stuart Bochner. Case AD–7

February 18, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING, FOX, AND HIGGINS

The issue in this case is whether the judge correctly found that Stuart Bochner, as the attorney representing respondent employers in several Board proceedings, engaged in willful delay of Board proceedings within the meaning of Section 102.21 of the Board's Rules and Regulations and engaged in "misconduct of an aggravated character" within the meaning of Section 102.44(b) of the Board's Rules and Regulations.[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings, and conclusions, as modified below, and to adopt his recommended Order.

We agree with the judge that Bochner violated Board Rules governing attorney misconduct.[3] We further agree that a suspension from practicing before the Board for a period of 2-1/2 years is warranted.[4] We find merit, however, in the General Counsel's exception to the judge's failure to find that Bochner's repeated and unjustified refusals to comply with properly served subpoenas constitute additional grounds for the discipline imposed.

As noted by the judge, during hearings in three separate Board proceedings,[5] Bochner failed to produce documents pursuant to subpoenas duces tecum served on his clients by the General Counsel. In none of these cases did Bochner move to revoke the subpoenas or otherwise state grounds for not complying. In responding to the subpoena served in *Cherry Hill*, Bochner simply stated "We did not comply and will not comply."

Contrary to the judge, we do not find that the availability of alternative remedies, such as the assessment of costs and fees or court enforcement of the subpoenas, precludes the General Counsel from seeking disciplinary sanctions against Bochner for his unjustified refusals to comply with the subpoenas. The Board recently found similar attorney refusals to comply with a subpoena, without proffering a reason for such refusals, to be "aggravated" misconduct within the meaning of Section 102.44(b) which warranted a disciplinary suspension from Board practice. See *In re: Joel Keiler*, 316 NLRB 763, 769 (1995). We find Bochner's misconduct in defying the subpoena process no less of an "aggravated" violation of Section 102.44(b). We therefore rely on this violation as an additional basis for his disciplinary suspension.

ORDER

It is ordered that, effective immediately, Attorney Stuart Bochner is suspended from practice before the Board for a period of 2-1/2 years.[6]

[1] On February 20, 1996, Administrative Law Judge Joel P. Biblowitz issued the attached decision. Bochner filed exceptions, supported by the posthearing brief and reply brief that he had filed with the judge. The General Counsel filed cross-exceptions and a supporting brief.

[2] We find no merit in Bochner's argument that the hearing in this case was improperly expanded to include litigation about his conduct in cases other than *Cherry Hill Textiles*, 318 NLRB 396 (1995). The Board's remand language in that decision was sufficiently broad to permit such litigation, the Regional Director's notice of hearing gave Bochner specific advance notice that such conduct would be at issue, and neither the 10(b) limitations period nor the doctrine of laches apply to the Board's disciplinary proceedings.

[3] In discussing the appropriate sanctions for Bochner's misconduct, the judge referred to *Frontier Hotel & Casino*, 318 NLRB 857 (1995), and to a court decision involving that same respondent employer. We note that the court decision did not involve an appeal of the cited Board decision. It involved an appeal of *Frontier Hotel & Casino*, 309 NLRB 761 (1992).

[4] Consistent with the judge's analysis, we find that Bochner committed "willful" violations of Sec. 102.21 of the Board's Rules, thus warranting the imposition of disciplinary sanctions. We note that resolution of the disciplinary issues in this case is consistent with, but does not involve application of, the modified Board Rules governing misconduct by attorneys and party representatives that went into effect on January 13, 1997.

[5] *Cherry Hill Textiles*, supra; *Riverdale Nursing Home*, 317 NLRB 881 (1995); and *Care Manor of Farmington*, 314 NLRB 248 (1994).

[6] We deny the General Counsel's request to extend the length of the suspension period and to impose additional restrictions on Bochner's suspension.

David A. Pollack, Esq. and *Rhonda P. Aliouat, Esq.*, for the General Counsel.
Stuart Bochner, Esq., pro se.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on November 27, 1995, in New York, New York. The genesis of this proceeding was a hearing in *Cherry Hill Textiles*, 318 NLRB 396 (1995), in which Administrative Law Judge Eleanor MacDonald, in her decision dated May 25, 1995, recommended that Attorney Stuart Bochner, counsel for respondent in that matter, be suspended from practicing before the Board for a period of 6 months. Her reasons for that recommendation were that Bochner signed an answer denying allegations that he knew to be true, failed to comply with a subpoena, without reason, and failed to file a petition to revoke the subpoena. Judge MacDonald concluded that his sole purpose was to delay the hearing. In addition, she found that Bochner misrepresented to her during the hearing that he was unfamiliar with a certain document and needed additional time in order to locate it. She found: "Bochner's misrepresentation, an outright lie, made on the record to an administrative law judge, is an egregious violation of his duty as an officer of the court or tribunal before which he appears." Based on the fact that Bochner had pre-

viously been given a warning by the Board in *Advance Waste Systems*, 306 NLRB 1020 (1992), Judge MacDonald recommended that he be suspended from practicing before the Board for a period of 6 months. In its Decision and Order dated August 17, 1995, the Board did not pass on Judge MacDonald's findings, conclusions, and recommendations[1] regarding the discipline of Bochner, but ordered:

> . . . that this proceeding is remanded to the Regional Director for Region 29 to schedule a hearing before an administrative law judge to determine the matters discussed above. The judge shall hear and receive testimony and evidence, and prepare and serve on the parties a decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations to the Board.

In otherwise affirming Judge MacDonald's findings, the Board stated at footnote 3:

> We do not pass on the judge's findings, conclusions, and recommended discipline with respect to Attorney Bochner. All arguments raised by the parties exceptions on the attorney misconduct issue, including the General Counsel's contentions concerning the length of the proposed suspension, may be pursued at the hearing.

By notice of disciplinary hearing dated September 28, 1995, Alvin Blyer, the Regional Director for Region 29 of the Board, ordered that a hearing be held before an administrative law judge on October 23, 1995 (later postponed until November 27, 1995), pursuant to the Board's Order in *Cherry Hill*. The notice further states: "The hearing will encompass Mr. Bochner's conduct in various National Labor Relations Board proceedings, included but not limited to, the above referenced *Cherry Hill* proceeding; *Advance Waste Systems*, 306 NLRB 1020 (1992); *De Jana Industries*, Case No. 29–CA–14349; *Care Manor of Farmington*, 314 NLRB [248] (1994); *Care Manor of Farmington*, 318 NLRB [330] (1995); and *Isratex, Inc.*, 29–CA–18177 et al." By amended notice of disciplinary hearing dated October 10, 1995, the Regional Director directed that the hearing "will encompass Mr. Bochner's conduct in *Artline Decorating Co., Inc.*, Case No. 29–RC–8486."

I. THE FACTS

Counsel for the General Counsel cites a number of cases in which Bochner has allegedly acted improperly. Where practical, these cases will be discussed chronologically.

A. *De Jana Industries, Case 29–CA–14349*

During this hearing, the administrative law judge admonished Bochner for telling a witness that he did not have to appear at the hearing because he was not served with a subpoena after he, the judge, had directed the individual to be present on the following day. Bochner then apologized to the judge and the record does not relate any further events in this matter.

[1] The respondent filed no exceptions to Judge MacDonald's finding that it violated Sec. 8(a)(1) and (5) of the Act.

B. *Advance Waste Systems, 306 NLRB 1020 (1992)*

During this hearing, Bochner constantly interrupted counsel for Respondent, the witnesses, and Administrative Law Judge MacDonald. Despite warnings from Judge MacDonald that he would be ejected from the hearing if his interruptions continued, he persisted in his pattern of interruptions and Judge MacDonald ordered him to leave. On his refusal to do so, the Federal Protective Service was called and they escorted him from the premises. Judge MacDonald recommended that Bochner be warned that he must not interrupt counsel, the witnesses, or the administrative law judge, and that his failure to comply at future hearings would result in sanctions being imposed by the Board. The Board, in its Order, stated: "It is further ordered that Attorney Bochner is warned that he must not interrupt counsel, the witnesses, or the judge, that he must follow instructions, and that a failure to comply at future hearings will result in sanctions being imposed by the Board."

C. *Care Manor of Farmington, 314 NLRB 248 (1994)*

In this matter, counsel for the General Counsel served a subpoena duces tecum on Bochner's client about 3 weeks prior to the commencement of the hearing; no petition to revoke the subpoena was filed on behalf of the respondent. At the hearing, Bochner refused to produce any of the subpoenaed records. At one point in these discussions at the hearing, counsel for the General Counsel stated that he had called Bochner a week earlier and offered to come to the Respondent's facility to "accommodate" the respondent and look through his records at that facility. Bochner responded:

> It is also our position that . . . General Counsel is disingenuous when he offers to come to our facility to look at our records, especially in light of the fact that from the date of the first charge filed in this proceeding, the Respondent has indicated that there would be no cooperation with any investigation. A request to come to our facility, therefor represented not an accommodation to us, but rather accommodation to him.

After counsel for the General Counsel rested its case, Bochner presented no witnesses on behalf of the Respondent. I was the judge in this matter. My decision, which issued on October 22, 1993, refers to an additional incident that occurred at the hearing:

> Counsel Bochner also alleges that he was improperly denied the opportunity to cross-examine witness McGhee. McGhee testified as a witness for General Counsel. At the conclusion of her testimony, General Counsel gave Counsel Bochner McGhee's affidavits pursuant to the Jencks' Act, 18 U.S.C. §3500. I initially gave counsel 20 minutes to read over the affidavits and, at his subsequent request, I gave him an additional 5 minutes. When I requested that he begin cross-examination of witness McGhee, Counsel Bochner refused, saying that he needed additional time so that he could write out the contents of McGhee's affidavit, claiming that it established that she committed perjury in her testimony in the representation hearing. Counsel for General Counsel objected to this use of the affidavit, and I informed Counsel Bochner that, under Jencks,

the affidavit is to be used solely for purposes of cross-examination. I informed him that, if that were his true purpose, he could make a Freedom of Information Act request to obtain the affidavit or that he could attempt to cross-examine McGhee about the alleged untrue testimony, or could attempt to move the affidavit into evidence. He refused all these suggestions and, when I again told him to begin cross-examination he refused and, instead, continued to copy the contents of the affidavit. I then excused witness McGhee.

It seems somewhat disingenuous of Counsel Bochner to allege that I deprived him of the right to cross-examine McGhee when I gave him that opportunity on a number of occasions and, instead, he refused my direction and acted improperly in copying the affidavit, rather than using the affidavit to cross-examine McGhee, as is provided by Jencks. Additionally, even after acting improperly, he could have retrieved the right to cross-examine McGhee by subpoenaing her, which he failed to do. It should be noted that although Counsel Bochner refused to follow my directions to begin cross-examination of witness McGhee, his conduct was not so contemptuous as to warrant further action against him pursuant to the Board's Decision in *Advance Waste Systems*, 306 NLRB 1020 (1992). [*Care Manor of Farmington*, 314 NLRB at 253–254.]

D. *Care Manor of Farmington, 318 NLRB 330 (1995)*

Administrative Law Judge Wallace Nations ordered that the respondent (Bochner's client) pay to the Board and the union all costs that it incurred in the matter, stating at 335:

> Respondent put on no defense to the Complaint allegations; yet it forced this proceeding to trial without any reason being given for its refusal to bargain or failure and refusal to furnish information to the Union in a timely fashion or at all. In its answer to the complaint, it even denied the appropriateness of the unit, though that matter was decided upon certification. It appears to me that the Respondent has vindictively set out to ignore the Union's certification and flaunt the Board's processes by its actions as described in the complaint and its actions before the Board with respect to this complaint.

The Board, in affirming this finding of Judge Nations, stated at 331:

> The Respondent's defiance of its lawful obligation to bargain and its refusal to resolve the resulting unfair labor practice charges short of trial caused the Board and the Union to expend resources needlessly and burdened the Board's processes unnecessarily. Accordingly, for the foregoing reasons and those stated by the judge, we find entirely justified the judge's awarding of an extraordinary remedy requiring the Respondent to pay to the Board and the Union all costs and expenses incurred in the investigation, preparation, presentation, litigation, and conduct of this case.

E. *Riverdale Nursing Home, 317 NLRB 881 (1985)*

In this matter respondent, through Bochner, refused to turn over subpoenaed documents, although he had not filed a petition to revoke, and failed to call any witnesses.

F. *Artline Decorating Co., Case 29–RC–8486*

Counsel for the General Counsel cites Bochner's actions in this case in two areas: during the hearing he requested the production of the union's showing of interest, and objected to the words: "All full time and regular part time" in the unit description. It is alleged that these actions are a further example of his raising frivolous issues in order to delay the proceedings. The Decision and Direction of Election at footnote 2 states, inter alia:

> During the hearing, the Employer's counsel, Stuart Bochner, requested the production of the Petitioner's showing of interest. He contended that the fundamentals of due process required that the Employer be allowed to examine the showing of interest to determine whether it had been legitimately obtained and to assist the Employer in conducting its election campaign. He also argued that revealing the identity of employees who signed authorization cards would increase their protection. The hearing officer denied the request for the production of the showing of interest . . . .

The decision then cited cases for the proposition that the Board does not permit litigation of the showing of interest at preelection hearings, and so found. The Decision and Direction at footnote 3 then cites Bochner's further position:

> The Employer's counsel, Stuart Bochner, initially took the position that the petitioned-for unit of all production and maintenance employees was "vague" as it made no mention of the Employer's shipping and packing employees. He offered to stipulate to the appropriateness of the petitioned-for unit, if it also included shipping and packing employees. The Petitioner then amended the proposed unit to include "all full-time and regular part-time production and maintenance employees, including shipping and packing employees, excluding all other employees." While Bochner continued to agree that the unit should include production, maintenance, shipping and packing employees, he refused to agree to the traditional placement of the words "all full-time and regular part-time" at the beginning of the unit description or to the proposed exclusion of "all other employees." He asserted that the Employer did not employ anyone with the formal classification of "full time employee" and complained that "this is all being sprung on me as last minute amendments." However, he declined the hearing officer's offer of a recess to confer with his client, and he refused to take any further position on the appropriateness of the petitioned-for unit. Bochner stated that he would brief his position after having examined the record. However, he did not file a brief herein.
>
> The proposed use of the words "all full-time and regular part-time" and the proposed exclusion of "all other employees" are not the type of amendments that

> should require more than a short recess to consider. Rather, they are traditional terms appearing in most unit descriptions. Bochner has practiced before the Board for many years and is well acquainted with such terms. It is clear that after the Petitioner accepted Bochner's offer to stipulate to the appropriateness of the unit if it included shipping and packing employees, Bochner proposed to withdraw from his proposed stipulation. The only conclusion that can be reached is that Bochner took these actions for the sole purpose of delay. I also note that the same conclusion can be reached with respect to his position regarding the showing of interest. (See fn. 1.) [Sic.] It is noted that this is not the first time that Bochner has taken positions in bad faith at Board hearings for the purpose of obfuscation and delay or the first time that Bochner has refused to cooperate with the person conducting the hearing. See *Advance Waste Systems*, 306 NLRB 1020 (1992); *Cherry Hill Textiles, Inc.*, JD–NY slip op. (May 25, 1995) [318 NLRB 396 (1995)]. Insofar as there is no dispute as to the scope or composition of the petitioned-for unit, and it is a unit which is generally recognized as an appropriate unit, I find it appropriate herein.

There was no request for review of this decision in *Artline*.

Bochner, who has practiced labor law since about 1978, was called as a witness by counsel for the General Counsel in the instant matter. He was asked:

> Q. . . . Mr. Bochner, are you familiar with any case law that permits an employer to view the showing of interest submitted by a petitioner in a representation proceeding?
>
> A. In fact, I know the case law to be just the opposite.
>
> Q. So that an employer or counsel for an employer is not entitled to view the showing of interest?
>
> A. In the present state of the law, that is correct. Although, I don't think that should be the present state of the law.

He testified that he raised the issue to "be a test case to reverse the case law." However, after he discussed the situation with his client, the client decided not to seek review of the Regional Director's decision. As to the issues discussed in footnote 3 of the Regional Director's decision in *Artline*, Bochner testified that the problem that he had with the union's amendment to the petition was the word "regular," although he could not remember whether he said that at the hearing. He felt that an individual who worked 1 hour every 3 months and possibly even 1 hour every year should be in the bargaining unit.

G. *Cherry Hill Textiles 318 NLRB 396 (1995)*

As stated above, in her decision which issued May 25, 1995, Judge MacDonald found fault with Bochner in three areas: in his answer he denied allegations that he knew to be true; he failed to comply with a subpoena without offering any reasons for his actions although he failed to file a petition to revoke the subpoena; and he misrepresented his lack of knowledge of a certain exhibit. Judge MacDonald concluded that this was all done in order to delay the hearing, and for that reason she recommended that he be barred from practicing before the Board for a period of 6 months.

The hearing before Judge MacDonald took place on December 22, 1994. The complaint, at paragraph 6, alleged that Moshe Rubashkin and Aaron Rubashkin are officers and supervisors of Respondent within the meaning of Section 2(11) of the Act and agents thereof, acting on its behalf. The complaint further alleged, at paragraph 7, that the following employees of respondent constitute an appropriate unit within the meaning of Section 9(b) of the Act: "All employees, excluding all office clerical employees, professional employees, foremen, managers, guards and supervisors as defined in the Act." Paragraph 11 of the complaint alleged that since on about May 23, 1993, the respondent continued to deduct dues and fees from the wages of its employees pursuant to valid checkoff authorizations, but unilaterally discontinued remitting these dues and fees to the union. Bochner, in his answer dated June 15, 1994, to this complaint, inter alia, denied each of these allegations, and counsel for the General Counsel alleges that these denials were not plead in good faith and do not comport with the requirements of Section 102.21 of the Board's Rules and Regulations. By letter dated November 28, 1994, the Regional attorney for Region 29 wrote to Bochner:

> On May 4, 1994, this Region issued a Complaint and Notice of Hearing in the above-captioned matter. On June 15, 1994, you submitted an answer to that Complaint.
>
> I have recently reviewed your answer with respect to certain allegations in the Complaint and I believe that it does not comply with Section 102.21 of the Board's Rules and Regulations, i.e., certain responses in your answer were not intended to place in issue matters that are genuinely in dispute but rather have been interposed for delay. Specifically, your denial to each and every allegation in paragraph 6 in which the Region asserts that Moishe and Aaron Rubashkin are officers, supervisors and agents of Respondent is contrary to the stipulation entered into by the Board, Respondent and the ILGWU on the record in the Board's earlier decision in 309 NLRB No. 142 (1992). Further, your response to paragraphs 8 and 10 appear to place in issue the existence of a collective bargaining agreement between the Charging Party and Respondent, effective by its terms from May 1, 1990 to April 30, 1993, and the inclusion in such agreement of a provision requiring that Respondent transmit to the Charging Party all dues that have been checked off from unit employees' paychecks. In the Board's decision cited at 309 NLRB No. 23 and enforced by the United States Court of Appeals for the Second Circuit on September 20, 1993, the Board and Court found the existence of the aforementioned collective bargaining agreement and a provision therein providing for Respondent to transmit dues which had been checked off to the Charging Party. Finally, I note that you have denied that the unit set forth in paragraph 7 of the Complaint is appropriate for the purposes of collective bargaining notwithstanding that it includes all employees of the Respondent and is the unit described in the collective bargaining agreement between Respondent and the Charging Party.

> In light of the above, I am requesting that you amend your answer so that the hearing currently scheduled for December 22, 1994, may be limited to those matters which are truly in dispute. If you do not, I will move to strike your answer with respect to those matters set forth above and request that the Board take action in a manner prescribed by Section 102.21.

Bochner did not respond to this letter nor did he amend his answer as requested therein.

Bochner filed an affirmation, dated November 22, 1994, in a case brought by the trustees of the United Production Workers Union, Local 17–18 Welfare Fund against Cherry Hill Textiles, Inc. in the United States District Court for the Eastern District of New York. In that affirmation, Bochner states that he is the attorney for the defendants in the action, and states further:

> The basis for the relief sought is the failure of Defendant's principal, Aron Rubashkin, to attend two scheduled depositions and one ordered deposition date. I have spoken with Aron Rubashkin, the principle so designated and he has informed me . . . .

At the hearing herein, Bochner testified that at the time that he prepared his answer to the complaint, he had no idea whether or not Rubashkin was a principal, an officer, or an agent of the respondent, and does not know who, on behalf of the respondent, retained his law firm, but he believes that they were a client before he joined the law firm. Bochner was asked if he discussed *Cherry Hill* with Chuck Ellman, of his law firm, and he answered yes. He was then asked if he had spoken to him about the case before he filed his answer, and he answered: "I don't know whether I did or not." A few moments later, he was asked:

> Q. You didn't discuss this with Mr. Elmen [sic]?
> A. If I did, I won't tell you about it.
> Q. Why, is he your client?
> A. No, it's work product.

When I overruled this objection, he refused to answer, testifying: "I said, but if I do recall, it would be work product." He was then asked if he spoke to either Aaron or Moshe Rubashkin prior to filing his answer and he answered yes and he was asked if he spoken to them to ascertain whether or not they were officers, agents, or representatives of the respondent, and he responded: "I don't tell you that. It's privileged." I disagreed, overruled the objection, but he refused to answer the question. In a prior case (*Cherry Hill Textiles*, 309 NLRB 889 (1992)), Mr. Ellman of Mr. Bochner's law firm, stipulated that Aaron Rubashkin was the owner of respondent and that Moshe Rubashkin, his son, was a supervisor within the meaning of Section 2(11) of the Act.

As stated above, Bochner also denied paragraph 11 of the complaint, which alleges that since about May 23, 1993, Respondent had continued to deduct dues and fees from its employees' wages, but had unilaterally discontinued remitting these amounts to the union. At the hearing before Judge MacDonald, Bochner stated: "We don't deny we deducted the dues. This is not an issue." At the hearing herein, he was asked:

> Q. But you were aware that, in fact, they had deducted dues?
> A. Whether I was or not is irrelevant. There's no requirement by anyone that a Respondent in an NLRB proceeding be required to admit the very substance of a charge. That they may—the Respondent may, in fact, rely and put the Government to its proof on the substance of the charges.
> Q. In fact, you believe that's with respect to every allegation in the complaint, don't you?
> A. Oh, absolutely I do.
> Q. You think that every single allegation regardless, that the Government has the burden of proving?
> A. Absolutely.
> Q. So that you're entitled to deny everything?
> A. Absolutely.

Bochner also denied the allegation contained in paragraph 8 that the union has been the exclusive collective-bargaining representative of the respondent's employees since about 1985, and that recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective for the term May 1, 1990, to April 30, 1993. As to this latter allegation, Bochner added to his denial the statement, "except refers the Court to any documents which may be properly placed before it." At the hearing herein, Bochner explained this answer in this manner:

> There's a standard form of denial when it comes to documents. It's found in the published forms under the New York CPLR, which was where I got my legal training. When an allegation in a complaint refers to a document and the existence of the document is not in dispute, but the import of the document is in dispute or other elements of the document are in dispute, the way to deny it is to deny it except refer the court to the document itself for what it means. That's what that means.

Bochner was then asked what he disputed about this allegation, and he testified that it was the final sentence of the allegation which said that the most recent agreement was effective for the period May 1, 1990, to April 30, 1993: "That just wasn't true." He testified that "apparently" there was a later agreement, although, during the hearing, on numerous occasions he contested whether this later contract existed. Bochner was then asked:

> Q. Mr. Bochner, you got a copy of the complaint in this case. Did you talk to your client about it?
> A. Yes.
> Q. Did you ask your client is that true, was there a collective bargaining . . . .
> A. I don't remember whether I did specifically on that. Some of it may have gotten into files.
> Q. Do you feel it's an obligation, Mr. Bochner, that before you file an answer that you take the time to consider drafting. And in drafting it, that it be accurate?
> A. Absolutely.
> Q. You did?
> A. Absolutely.
> Q. And so did you discuss that . . . .
> A. Accuracy is a relevant thing.

Q. Well, let me ask you. Did you discuss that with your client?

A. Precision is accuracy. I believe in precision.

Q. Did you discuss that with your client?

A. Yes.

Q. . . . . whether or not that was?

A. Yes.

Q. And so, based on that, you felt that that was not the most recent contract?

A. I felt that the clause had . . . that the language had to be denied, because there was some doubt.

Q. You mean, you had a doubt at the time as to whether or not there was . . . .

A. I had to put the Government through the test.

The remaining finding made by Judge MacDonald was that Bochner purposely misrepresented his knowledge concerning General Counsel's Exhibit 12 and sought and received time to investigate the authenticity of this document, when, in the words of Judge MacDonald, this was "an outright lie" made for the sole purpose of delaying the hearing. As set forth in Judge MacDonald's decision, counsel for the General Counsel introduced into evidence as General Counsel's Exhibit 12, an extension of the collective-bargaining agreement signed by Moshe Rubashkin that is dated February 2, 1994. Bochner claimed that he was unaware of this document, stating, "I have a right to show this to my client and say to him, is this your signature?" He also stated: "I was not aware of the documents . . . ." He further stated on the record: "I'm going to tell you unequivocally that no such copy of this document exists in any of our *Cherry Hill* files." Because of Bochner's representations, Judge MacDonald kept the record open in order for Bochner to investigate the February 2, 1994 document and, if necessary, to request another hearing date in order to present witnesses concerning its authenticity. By letter dated January 6, 1995, Bochner wrote to Judge MacDonald:

> I have shown a copy of [the document] to Burt Horowitz of my office. He has indicated to me that the document is not in his handwriting and that prior to my showing it to him he had never seen it before . . . Mr. Moshe Rubashkin has indicated to me the signature looks like it is his but has no recollection of signing the document.

The first amended complaint in the civil case brought by the trustees of the union welfare fund against *Cherry Hill* contained, as an exhibit, the February 2, 1994 extension agreement. These documents were served on Bochner's law firm in July 1994, and Bochner filed the answer to this amended complaint on August 2, 1994. The plaintiffs filed a notice of motion for default judgment dated November 7, 1994; the February 2, 1994 extension agreement was also included in these documents.

H. *Isratex, Inc., Case 29–CA–17847*

The General Counsel's objections to Bochner's actions in this matter were his denials of paragraphs 10 and 13 of the complaint contained in his answer dated January 24, 1994. Paragraph 10 is divided into subsections (a), (b), and (c). Paragraph 10(a) alleges that the respondent was a member of the Williamsburg Trade Association, Ltd., a trade association consisting of employer-members. Paragraph 10(b) alleges that until October 28, 1993, the union was the exclusive collective-bargaining representative of respondent's employees in an appropriate unit and was recognized as such by respondent from about April 1, 1991, through October 28, 1993, and that such recognition was embodied in successive contracts, the most recent of which was effective from April 1, 1991, through March 31, 1994. Paragraph 10(c) alleges that this contract provides that respondent shall remit monthly contributions and monthly remittance reports to the union. Paragraph 13 alleges that since on or about October 10, 1993, the respondent has unilaterally failed and refused to remit the required monthly contributions to the union's welfare fund. Bochner was questioned about this answer at the hearing herein. He testified that he believes that he spoke to his client prior to preparing this answer. As to whether he felt the allegations in paragraphs 10 and 13 were true, he testified: "I felt it was neither true nor untrue. My feelings were irrelevant." As to the allegations of subparagraph (b) of paragraph 10 that the respondent was a party to a collective-bargaining agreement with the union, he testified, "It was disputed by my clients, certainly." Subsequently, he was asked if prior to filing the answer he spoke to his client about the allegations and he said that he did. He was then asked:

> Q. By Mr. Pollack: And you asked him whether or not he was a party to a collective-bargaining agreement with Local 1718?
>
> A. Not in so many words, yes.
>
> Q. Well, tell us the words, Mr. Bochner.
>
> A. I don't remember the words.
>
> Q. And he said, no, I'm not?
>
> A. I'm not telling you what he said.

Bochner then testified:

> A. . . . . This paragraph 10 has got a whole lot of things in there. The whole paragraph is denied. That does not mean that each and every element is denied. It only means that you put together a paragraph with six or seven allegations in there and we denied them.
>
> Q. Let me see if I understand you correctly. In other words, you might be admitting to—when you deny a paragraph in its entirety, you really might be admitting to something?
>
> A. Oh, absolutely. That's a standard practice.
>
> Q. I see.
>
> A. That's a standard practice. And it's clarified at hearings always . . . .
>
> Q. Mr. Bochner, have you ever denied in part and admitted in part anything?
>
> A. Not my practice.

In exceptions to the decision of the administrative law judge in this matter, dated December 16, 1994, Steven B. Horowitz, Esquire, of Mr. Bochner's law firm, states:

> It is undisputed in this matter that Respondent was a party to the Collective Bargaining Agreement with Local 17–18 which required monthly contributions to the Welfare Fund together with monthly remittance reports. It is likewise undisputed that Respondent failed

to make these contributions/remittance reports for the months of September and October of 1993, and that those actions by Respondent violated Section 8(a)(1) and (5) of the Act.

I. *Isratex, Inc., Case 29–CA–18177, et. al.*

The consolidated complaint in this matter, which issued on April 28, 1995, in its jurisdictional allegations, alleges:

> 3. During the past year, which period is representative of its annual business operations generally, Respondent, in the course and conduct of its business operations described above in paragraph 2, sold and shipped from its Brooklyn facility, products, goods and materials valued in excess of $50,000 directly to points located outside the State of New York.
>
> 4. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent, by Bochner, in its answer dated May 4, 1995, denied these allegations in their entirety even though he had admitted the same allegations verbatim in Case 29–CA–17847, discussed above. He was questioned about this answer at the hearing herein, and testified that he doesn't recall whether he spoke to the client prior to filing the answer because there was a bankruptcy involved. In addition, due to the bankruptcy, he did not know who the principals of respondent were. He was then asked:

> Q. Mr. Bochner, you denied $50,000. You know now that was a ridiculous answer, don't you?
>
> A. Absolutely not.
>
> Q. It wasn't?
>
> A. Absolutely not. I have a company in bankruptcy.
>
> Q. You do? And this company in bankruptcy was doing a substantial amount of business with the Federal Government, wasn't it?
>
> A. With the Federal Government, absolutely.
>
> Q. Mr. Bochner, you've been in practice for—you've been in practice before this Agency for at least 15 years. Correct?
>
> A. I said that already.
>
> Q. Right. Are you telling us now that you're unaware that a company doing business with the Federal Government is not engaged in commerce?
>
> A. Just to the contrary. A company that's in business with the Government is engaged in commerce irrespective of amount.
>
> Q. So that you believe that if a company does business with the Federal Government, they're in commerce?
>
> A. Absolutely. In fact, when this hearing opened, I said—it's the first thing I said or one of the first things I said.

The General Counsel introduced into evidence invoice inquiries that were exhibits in the underlying case in this matter which establish that the Federal Government sent checks to respondent in amounts totaling approximately $25 million between early 1993 and July 1995. At the hearing, Bochner stated that he was willing to withdraw his denial of paragraph 4 and stipulate to commerce, but he would not withdraw his denial of paragraph 3. Counsel for the General Counsel asked him to stipulate that the respondent did more than $50,000 worth of business with the Federal Government, but he refused to do so.

The General Counsel also objects to statements that Bochner made to a witness in this matter. At one point, the witness testified that his work permit was obtained under somebody else's name:

> Q. By MR. BOCHNER: And at the time you got the—your present green card, when you made your application in March of this year, did you tell the United States Government that you had been working under false names for the past for [sic] years?
>
> MS. CHAU: Objection.
>
> MS. ESPOSITO: Objection.
>
> JUDGE SNYDER: He may answer that.
>
> THE WITNESS: To the American Government? No.
>
> MR. BOCHNER: They know now. Don't they know.
>
> JUDGE SNYDER: What do you mean by that? They—
>
> MR. BOCHNER: They know now. This is the United States Government. I'm going to see if they're going to tell Immigration and Naturalization Service that this present green card is an illegal green—a fraudulently obtained green card.
>
> JUDGE SNYDER: I—
>
> MR. BOCHNER: I'm going to see. I'll wait and see.
>
> JUDGE SNYDER: Yeah.
>
> MR. BOCHNER: And then I'll tell them.

Finally, Bochner testified in the hearing herein that he is aware of the Board procedures that must be followed in order to have a Board agent, representative, or employee testify, and that he never made such a request to the General Counsel prior to the *Isratex* hearing to have any representative of the Board testify. Yet at that hearing, he stated that he wanted to have Regional Director Blyer testify. In the instant hearing, after the General Counsel completed his examination of Bochner, and stated that he had no further witnesses, Bochner called David Pollack, counsel for the General Counsel as a witness. When I asked Bochner if he had made a request to the General Counsel to have Pollack testify, he said that he had not, and I excused Pollack, and Bochner rested.

II. ANALYSIS

As can be see from the above, the General Counsel cites numerous forms of conduct by Bochner that would warrant his being barred from practicing before the Board. These include:

> (a) Filing answers that he knew, or should have known, were false in violation of Section 102.21 of the Board's Rules and Regulations.
>
> (b) Purposely engaging in delaying tactics during hearings.
>
> (c) Failing to supply subpoenaed documents at hearings even in the absence of a petition to revoke the subpoena, and failing to present any witnesses at the conclusion of General Counsel's case.
>
> (d) Purposely misrepresenting facts at a hearing.

(e) Disregarding the directions of the administrative law judge.

(f) Engaging in improper conduct in questioning witnesses.

I disagree with counsel for the General Counsel in point (c), above. As described above, in *Care Manor of Farmington*, 314 NLRB 248 (1994), *Care Manor of Farmington*, 318 NLRB 330 (1995), and *Riverdale Nursing Home*, 317 NLRB 881 (1995), Respondent, by Bochner, refused to produce the subpoenaed documents even though he filed no petition to revoke, and presented no witnesses at the conclusion of the General Counsel's case. However, there are less drastic remedies available to the General Counsel in these situations than the remedies sought herein. Counsel for the General Counsel could invoke *Bannon Mills*, 146 NLRB 611 (1964), request the administrative law judge to adopt an adverse inference, *National Football League*, 309 NLRB 78, 97–98 (1992), as was done in *Riverdale Nursing Home*, or could go to the United States District Court for subpoena enforcement. An additional, and possibly more potent remedy would be for the General Counsel to request that the respondent and, if the evidence supports it, counsel for respondent pay the Board and the charging party's costs incurred in the proceeding, as was done in *Care Manor*, supra, 318 NLRB 330. For these reasons, I find that Bochner's failure to produce subpoenaed documents even after failing to file a petition to revoke the subpoenas, and his failure to present any evidence on behalf of his client after the General Counsel rested its case, will not be the basis of any action against him herein.

On the other hand, the evidence clearly establishes that Bochner's actions herein do not comport with the requirements of Section 102.21 of the Board's Rules and Regulations. That section provides, inter alia:

> The signature of an attorney constitutes a certificate by him that he has read the answer; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay . . . . For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action.

This language is very similar to that contained in Rule 11 of the Federal Rules of Civil Procedure and is meant to serve the same purpose: to assure that pleadings be truthful and not be interposed for the purpose of delay. In *Ruffin v. ITT Continental Baking Co.*, 636 F.Supp. 857 at 859 (N.D.Miss. 1986), the judge stated:

> Rule 11 thus imposes an affirmative duty on counsel to make reasonable pre-filing inquiries with respect to both the legal and factual bases underlying the complaints. Whether an attorney has complied with the requirements of Rule 11 is determined not by the apparent absence or presence of subjective good faith on the part of the attorney but rather by the objective reasonableness of his actions. Rule 11 therefore states that sanctions shall be imposed where the court finds that (1) a competent attorney, after reasonable inquiry, could not form a reasonable belief that a pleading is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, or (2) a pleading or other filing was otherwise interposed for an improper purpose. [Citations omitted.]

Rule 11 cases are helpful even though it appears that these rules are not applicable to administrative hearings. *Raser Tanning Co. v. NLRB*, 276 F.2d 80 at 83 (6th Cir. 1960); *Lyman Printing & Finishing Co.*, 183 NLRB 1048 at 1055 (1970). In *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 253 (1985), the Second Circuit read Rule 11 as meaning that "subjective good faith no longer provides the safe harbor it once did." In *Colorado Chiropractice Council v. Porter Memorial Hospital*, 650 F.Supp. 231 at 238 (D. Colorado 1986), the judge stated: "Federal Courts in this district have not hesitated to impose sanctions when a party has failed to make a reasonable inquiry into the facts or law relevant to their pleadings and motions." *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1536 (9th Cir. 1986), in discussing the 1983 amendment to Rule 11, stated: "the [1983] amendments' major purposes were the deterrence of dilatory or abusive pretrial tactics and the streamlining of litigation." Although these cases and most in this area refer to sanctions on the plaintiff's attorney for bringing or maintaining frivolous lawsuits, I believe the same standards would also apply to a counsel who files a frivolous answer. The only case found under Rule 11 involving an answer is *Cook Associates, Inc. v. National Western Devcorp.*, a decision issued by District Judge Kocoras, United States District Court for the Northern District of Illinois, Eastern Division, on January 15, 1988, where the judge found that Rule 11 sanctions were warranted against Sanchez, the defendant's attorney, stating:

> In this case, it was Mr. Sanchez's own client that controlled the information, not plaintiff. Assuming arguendo that defendant refused to provide Mr. Sanchez with the relevant information or even lied to him, counsel still has a duty to independently investigate the facts of the case before representing its contents to a federal court. "Counsel who puts the burden of study and illumination on the [plaintiff] or the court must expect to pay attorney's fees under the Rule." *Thornton v. Wahl*, 787 F.2d 1151, 1154 (7th Cir. 1986).

The court in *Cook* concluded: "it is difficult to reach any other conclusion regarding defendant's or Mr. Sanchez's conduct, except that it was solely for the improper purpose of delaying this action." I can imagine no better example of the purposes of Rule 11 and Section 102.21 than Bochner's actions herein.

In *Cherry Hill Textiles*, 318 NLRB 396 (1995), Bochner denied the complaint allegations that Moshe Rubashkin and Aaron Rubashkin were officers, supervisors, or agents of the respondent, the appropriate unit, the union's representative status and the most recent contract, and the allegation that the respondent continued to deduct the dues from its employees' wages, but unilaterally discontinued remitting these amounts to the union. Bochner's denial of supervisory or agency status of the Rubashkins defies belief, as does his testimony on the subject. In a prior case involving *Cherry Hill*, about a year earlier, another member of Bochner's firm stipulated that Aaron Rubashkin was the owner of respondent and that Moshe Rubashkin, his son, was a supervisor within the meaning of Section 2(11) of the Act. Bochner would

have the court believe that he was not sure whether he spoke to Mr. Ellman nor did he know who was the principal or owner of the respondent prior to filing his answer. Neither this court, nor any court, would believe that testimony. Further, Bochner's actions herein do not comport with the requirements placed on counsel by the courts under Rule 11 to make a reasonable inquiry into the facts and allegations prior to preparing his answer. If he had made even the most cursory investigation, he would have learned of the Rubashkins' positions with the company.

Bochner's denial of paragraph 8 of the complaint is especially confusing. He testified that he denied this allegation because it alleged that the most recent collective-bargaining agreement between the parties was effective from May 1, 1990, to April 30, 1993. He testified that this wasn't true, that "apparently" there was a later agreement. And yet, the apparent "later agreement," the extension agreement dated February 2, 1994, was the General Counsel's exhibit that Bochner told Judge MacDonald he knew nothing about. There appears to be an obvious conflict between Bochner's testimony herein that there was a later agreement and his statements to Judge MacDonald that he knew nothing of the extension agreement.

I am not as bothered by Bochner's denial of paragraph 11 of the complaint because of the number of allegations contained in that one paragraph. Had there been two or three separate subparagraphs alleging that the deductions had continued, that the respondent had discontinued remitting the amounts to the union, and that it had been done unilaterally by respondent, Bochner would have run afoul of Section 102.21 by denying all of these allegations. However, one could argue that the word "unilaterally" made the allegation arguably deniable.

Isratex, Case 29–CA–17847, is another example of a patently false answer within the purview of Section 102.21. The two complaint paragraphs at issue herein are paragraphs 10 and 13. Paragraph 10 is divided into subparagraphs a, b, and c. Bochner's bad faith herein is perfectly clear by his denial of all of paragraph 10. When he was asked by counsel for the General Counsel whether he has ever admitted in part and denied in part in his answer, he testified: "Not my practice." This response is clearly ingenuous, as is his testimony that it is irrelevant whether he feels that the complaint allegations are true or untrue. Section 102.21 requires that there be good ground to support an answer. As part of his denial of paragraph 10, Bochner denied that his client was a member of the Williamsburg Trade Association, Ltd., subparagraph (a). There could have been no dispute about that if Bochner had spoken to his client prior to filing the answer, as he testified to, or if he had made a reasonable inquiry of the subject as required by Rule 11. Also undeniably true, although denied, was the allegation in paragraph 10(c) that the contract between the parties provided that Respondent would remit monthly contributions and remittance reports to the Union. The exceptions that were filed by Bochner's law firm to the decision of the administrative law judge in this matter stated that all of these allegations were "undisputed." The nature of this case makes it clear that the allegations contained in paragraphs 10 and 13 were undisputed not only after the hearing had been completed, but at the time that the answer was filed, and that if the answer had been filed in good faith, and pursuant to Section 102.21, these allegations (or at least some of them) would have been admitted.

Bochner's answer in *Isratex*, Case 29–CA–18177, is even more outrageous. While in the prior *Isratex* case discussed above he admitted the jurisdictional allegations, in this case he denied the jurisdictional allegations. Because of this denial, the counsel for the General Counsel had to subpoena a representative of the Department of Defense as well as a large number of documents which established that during the 2-year period preceding the hearing, the Federal Government paid the respondent approximately $25 million for work performed for the Defense Department. This is an apt example of the purpose of Section 102.21 and why counsel who violate it should be disciplined. There was absolutely no doubt that paragraphs 3 and 4 were true, yet Bochner denied them even though he had admitted the same allegations in the earlier matter. Neither the Board nor the Charging Parties should have to expend time and money needlessly when an attorney denies something that is so obviously true, as Bochner did herein.

The evidence also establishes that Bochner purposely engaged in delaying tactics during hearings. *Artline* is an example of these tactics. At the hearing he requested production of the union's showing of interest, although, as an experienced practitioner before the Board, he knew that there was no chance that this request would be granted. He testified that he raised this issue to "be a test case to reverse the case law," yet he never sought review of the Regional Director's decision, allegedly because his client told him not to do so. If this was the only incident of its kind by Bochner I might believe this testimony. However, with the large number of incidents alleged herein, and even a further incident in the same case, I do not credit his testimony that his client directed him not to seek review of the Regional Director's decision. Rather, I find that it is a further example of Bochner's attempts to delay hearings in any way that he can, whether through frivolous answers or frivolous positions. Later in *Artline*, Bochner objected to the requested unit of production and maintenance employees as vague because it did not mention the employer's shipping and packing employees, and he offered to stipulate to a unit which included those employees as well. When the petitioner amended the unit description to include "all full-time and regular part-time production and maintenance employees, including shipping and packing employees, excluding all other employees," Bochner then objected to the words "all full-time and regular part-time" and to the exclusion of "all other employees." Bochner's testimony that his problem was with the word "regular," because he felt that an employee who worked 1 hour every 3 months or, possibly, 1 hour every year, should be in the unit is totally incredible, and I agree with the finding in the Regional Director's decision that Bochner took this position, as well as the request to see the union's showing of interest, for the sole purpose of delaying the hearing.

An additional example of Bochner's actions that were meant to delay the hearings that he participates in is his calling as witnesses representatives of the Board without following the procedure required by the Board's Rules and Regulations of requesting prior approval from the General Counsel to call these witnesses. Bochner did this in *Isratex*, Case 29–CA–18177 when he attempted to call Regional Director Blyer to testify, although Bochner testified that he is aware

of these procedures and he did not follow them prior to calling Blyer to testify. Immediately after so testifying, counsel for the General Counsel rested and Bochner called him as his witness. I believe that this illustrates Bochner's bad faith and disdain for this agency and its rules.

I agree with Judge MacDonald's findings that Bochner's statements during the *Cherry Hill* hearing regarding General Counsel's Exhibit 12, the February 2, 1994 contract extension, were "an outright lie." During the hearing conducted on December 22, 1994, Bochner stated: "I was not aware of the documents," "I have a right to show this to my client and say to him, is this your signature," and "I'm going to tell you unequivocally, that no such copy of this document exists in any of our *Cherry Hill* files." On the basis of these statements by Bochner, Judge MacDonald kept the record open for him to investigate the exhibit. The truth is that a copy of the February 2, 1994 contract extension was served on Bochner's firm as part of a first amended complaint of the civil action in August 1994 (4 months prior to Judge MacDonald's hearing) and Bochner filed the answer to this complaint a month later. That is not all; in November 1994, 1 month before Judge MacDonald's hearing, the plaintiffs in that case filed a default judgment notice, also with the February 2, 1994 contract extension attached. Clearly, Bochner was aware of this document on December 22, 1994, and I would agree with Judge MacDonald's characterization of his statements as outright lies, and I agree with the recommendation of Judge MacDonald that these actions warrant Bochner being barred from practicing before the Board for a period of 6 months for violating the provisions of Section 102.44(b) of the Board's Rules and Regulations.

A further example of what I perceive as Bochner's disdain for the Board and, even the instant hearing, occurred during counsel for the General Counsel's questioning of Bochner about his answer in *Cherry Hill*:

> Q. Do you feel it's an obligation, Mr. Bochner, that before you file an answer that you take the time to consider drafting. And in drafting it, that it be accurate?
>
> A. Absolutely.
>
> Q. And so did you discuss that . . . .
>
> A. Accuracy is a relevant thing.
>
> Q. Well, let me ask you. Did you discuss that with your client?
>
> A. Precision is accuracy. I believe in precision.

It appears to me that Bochner's last two answers above were not meant to be responsive to the questions, but were sarcastic and cynical answers that illustrate Bochner's scorn for the counsel for the General Counsel, the Board, and its Rules.

Finally, counsel for the General Counsel objects to the threatening statements that Bochner made to the witness in *Isratex*, Case 29–CA–18177. After learning that a witness whom he was questioning had obtained a work permit under another name, he stated on the record in front of the witness that he would wait to see if the Board reported him to the Immigration and Naturalization Service and, if they didn't, "then I'll tell them." The issue is whether this was misconduct at a hearing "of an aggravated character" under Section 102.44(b) of the Board's Rules and Regulations. Although I find Bochner's statements to be totally inappropriate, I find that they fall just short of being "misconduct of an aggravated character," and it will not be the basis of any finding against him.

The ultimate question herein is what sanctions, if any, should be placed upon Bochner for the above-discussed conduct. Counsel for the General Counsel's brief requests that Bochner be suspended from practicing before the Board for a period of not less than 5 years. The Board has recently made clear that it will no longer tolerate actions that it accepted in the past. In *In re: Joel I. Keiler*, 316 NLRB 763 (1995), the Board suspended Keiler from practice before the Board for 1 year for "misconduct of an aggravated nature" under Section 102.44(b) of the Board's Rules and Regulations, finding that his actions were "motivated by nothing more than a desire to obstruct and delay the hearing." The Board concluded: "We are no longer willing, as we have in the past, to limit our expressions of disapproval to a warning or admonition to refrain from such conduct in the future." In addition, in *Frontier Hotel & Casino*, 318 NLRB 857 (1995), the Board ordered the respondent to pay to the General Counsel and to the charging party unions their costs and expenses throughout the case, stating: "Moreover, through its reliance on frivolous defenses in its litigation of these allegations, the Respondent has further depleted the Charging Party's resources and needlessly wasted the resources of this Agency." Bochner has done the same herein. When the respondent in *Frontier Hotel* appealed the Board's Order, the court found the appeal frivolous, and ordered the respondent and its original counsel, Keiler, to pay to the Board and the union double costs and attorneys fees under Rule 38.

The principal findings herein relate to Bochner's noncompliance with Section 102.21 of the Board's Rules and Regulations. The evidence establishes either that denials in his answers were not truthful, or that he did not conduct a proper investigation of the complaint allegations. The most outrageous of these answers was in *Cherry Hill* and *Isratex* and the unmistakable conclusion is that, regardless of Section 102.21 of the Board's Rules and Regulations, Bochner feels that he can deny every allegation (as he testified) even if he knows it to be true. Additionally, as he also testified, he feels that he can deny any allegation separated into subparagraphs, and deny any allegation referring to a document. This is simply not correct. There is no valid reason for the Board and charging parties to waste their resources and time proving allegations that clearly were correct as alleged in the complaint, such as the jurisdictional allegations in *Isratex* and the agency and supervisory allegations in *Cherry Hill*.

In *M. J. Santulli Mail Services*, 281 NLRB 1288 (1986), *Worldwide Detective Bureau*, 296 NLRB 148 (1989), and *Graham-Windham Services*, 312 NLRB 1199 (1993), the Board warned counsel that it disapproved of their violations of Section 102.21 and that future transgressions would be dealt with more severely. I do not believe that a warning is appropriate herein. Bochner was given a warning by the Board in *Advance Waste Systems*, 306 NLRB 1020 (1992); 1 year later, in the earlier *Care Manor* case, I found that Bochner's actions therein did not quite warrant converting that warning to a more severe penalty. One month prior to the *Cherry Hill* hearing, counsel for the General Counsel notified Bochner that his answer was in violation of Section 102.21 and requested that he amend his answer, but he refused to do so. Additionally, after Judge MacDonald issued her *Cherry Hill* decision on May 25, 1995, in which she

found that he violated Section 102.21, as well as lying to her in violation of Section 102.44, Bochner did not act to amend his answer in *Isratex*. Finally, it is clear from his testimony before me that Bochner still does not understand that an attorney is only warranted in denying allegations that are truly contested. In fact, Bochner, in his reply brief herein dated February 8, 1996, analogizes Board proceedings to criminal matters and states: "In either case, the Respondent/defendant should not and is not required to admit anything." What he, apparently, does not understand is that the Board is not asking him to admit anything in dispute in order to gain an unfair advantage over his client. What Section 102.21 requires is that *allegations not in dispute* be admitted, and this case presents a perfect example of such a situation.

For repeatedly violating the provisions of Section 102.21 of the Board's Rules and Regulations, I recommend that Bochner be barred from practicing before the Board for a period of 2 years in addition to the 6-month sanction for violating the provisions of Section 102.44 of the Board's Rules and Regulations.

ORDER

Based on the above findings, it is recommended that, effective immediately, Stuart Bochner be sanctioned by being barred from practicing before the Board for a period of 2 years for violating the provisions of Section 102.21 of the Board's Rules and Regulations and for an additional 6 months for violating the provisions of Section 102.44 of the Board's Rules and Regulations, for a total of 2-1/2 years.